No. 16-1371

In the Supreme Court of the United States

TERRENCE BYRD, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
JOHN P. CRONAN
Acting Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
ERIC J. FEIGIN
FREDERICK LIU
Assistants to the Solicitor General
THOMAS E. BOOTH
Attorney
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioner is entitled to claim that a search of the rental car he was driving violated his individual Fourth Amendment rights, when the renter was forbidden from allowing him to drive it.

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 1
Constitutional provision involved 1
Statement 2
Summary of argument 9
Argument:
Petitioner had no Fourth Amendment interest in a rental car that he was prohibited from driving 11
A. Petitioner's illegitimate presence in Avis's car cannot support a Fourth Amendment claim 11
B. Neither property rights nor societal expectations support petitioner's assertion of a Fourth Amendment interest in Avis's car 21
1. Petitioner had no enforceable property rights in a car he was not allowed to drive 21
2. No societal understanding provided petitioner with a reasonable expectation of privacy in his unauthorized operation of Avis's car 29
C. Petitioner's "possession and control" test is unsound 35
Conclusion 41

TABLE OF AUTHORITIES

Cases:

Adickes v. *S. H. Kress & Co.*, 398 U.S. 144 (1970) 39
Alderman v. *United States*, 394 U.S. 165 (1969) 12
Brendlin v. *California*, 551 U.S. 249 (2007) 34
California v. *Carney*, 471 U.S. 386 (1985) 6, 28
Chapman v. *United States*, 365 U.S. 610 (1961) 20

Cases—Continued: Page

Commonwealth v. *Campbell*, 59 N.E.3d 394 (Mass. 2016) 27
Discover Prop. & Cas. Ins. Co. v. *University of Vt. & State Agric. Coll.*, No. 06-cv-22, 2009 WL 4505497 (W.D. Va. Dec. 2, 2009) 26
Dockery v. *Enterprise Rent-A-Car Co.*, 796 So. 2d 593 (Fla. Dist. Ct. App. 2001) 26
Florida v. *Jardines*, 569 U.S. 1 (2013) 12
Fojtik v. *Hunter*, 828 A.2d 589 (Conn. 2003) 19
Gwin v. *Emerald Co.*, 78 So. 758 (Ala. 1918) 27
Hall v. *State*, 477 S.E.2d 364 (Ga. Ct. App. 1996) 25
Hill v. *Commonwealth*, No. 2016-CA-276, 2017 WL 3328117 (Ky. Ct. App. Aug. 4, 2017) 30
Jones v. *United States*, 362 U.S. 257 (1960) 13, 14, 17
Katz v. *United States*, 389 U.S. 347 (1967) 12
Kender v. *Auto-Owners Ins. Co.*, 793 N.W.2d 88 (Wis. Ct. App.), review denied, 791 N.W.2d 381 (Wis. 2010) 26
Mancusi v. *DeForte*, 392 U.S. 364 (1968) 36
Minnesota v. *Carter*, 525 U.S. 83 (1998) ..... *passim*
Minnesota v. *Olson*, 495 U.S. 91 (1990) 12, 14, 17, 29, 35
Moreno v. *Idaho*, No. 15-cv-342, 2017 WL 1217113 (D. Idaho Mar. 31, 2017) 24
New York v. *Class*, 475 U.S. 106 (1986) 20
Oliver v. *United States*, 466 U.S. 170 (1984) 29
Planet Ins. Co. v. *Wong*, 877 P.2d 198 (Wash. Ct. App.), review denied, 889 P.2d 498 (Wash. 1994) 30
Rakas v. *Illinois*, 439 U.S. 128 (1978) ..... *passim*
Rawlings v. *Kentucky*, 448 U.S. 98 (1980) 12, 17, 18, 21, 32
Revillon Freres v. *Cassell Trucking Co.*, 264 N.Y.S.2d 24 (App. Div. 1965) 24
Rios v. *United States*, 364 U.S. 253 (1960) 36

Cases—Continued: Page

Schneckloth v. *Bustamonte*, 412 U.S. 218 (1973) 6
Siverson v. *Martori*, 581 P.2d 285 (Ariz. Ct. App. 1978) 24
South Dakota v. *Opperman*, 428 U.S. 364 (1976) 20
State v. *Bass*, 300 P.3d 1193 (Okla. Crim. App. 2013) 27
State v. *Huddleston*, 877 N.E.2d 354 (Ohio Ct. App. 2007) 30
State v. *Pinkston*, No. 103833, 2016 WL 4399396 (Ohio Ct. App. Aug. 18, 2016) 26
State v. *Sanders*, 614 P.2d 998 (Kan. Ct. App. 1980) 25
State v. *Webber*, 105 P.3d 279, 2005 WL 283585 (Kan. Ct. App. Feb. 4, 2005) 25
United States v. *Allen*, 619 F.3d 518 (6th Cir.), cert. denied, 562 U.S. 1110 (2010) 33
United States v. *Arvizu*, 534 U.S. 266 (2002) 34
United States v. *Best*, 135 F.3d 1223 (8th Cir. 1998) 33
United States v. *Boruff*, 909 F.2d 111 (5th Cir. 1990), cert. denied, 499 U.S. 975 (1991) 33, 34
United States v. *Cooper*, 133 F.3d 1394 (11th Cir. 1998) 33
United States v. *Finke*, 85 F.3d 1275 (7th Cir. 1996) 33
United States v. *Gilliam*, No. 12-cr-93, 2016 WL 704702 (W.D. Pa. Feb. 23, 2016) 28
United States v. *Jones*, 565 U.S. 400 (2012) 12, 17, 21, 23
United States v. *Kennedy*, 638 F.3d 159 (3d Cir. 2011), cert. denied, 565 U.S. 1110 (2012) 8, 30, 32, 39
United States v. *Knotts*, 460 U.S. 276 (1983) 34, 39
United States v. *Lamar*, 562 Fed. Appx. 802 (11th Cir. 2014) 28
United States v. *Lumpkins*, No. 11-cr-54, 2011 WL 3320530 (W.D. Mo. July 6, 2011) 29
United States v. *Miller*, 821 F.2d 546 (11th Cir. 1987) 32

Cases—Continued: Page

United States v. *Mincey*, 321 Fed. Appx. 233 (4th Cir. 2008), cert denied, 558 U.S. 945 (2009) 28
United States v. *Obregon*, 748 F.2d 1371 (10th Cir. 1984) 33, 34
United States v. *Padilla*, 508 U.S. 77 (1993) 12
United States v. *Smith*, 263 F.3d 571 (6th Cir. 2001) 39
United States v. *Thomas*, 447 F.3d 1191 (9th Cir. 2006) 33
United States v. *Wellons*, 32 F.3d 117 (4th Cir. 1994), cert. denied, 513 U.S. 1157 (1995) 34
United States Fire Ins. Co. v. *Paramount Fur Serv., Inc.*, 156 N.E.2d 121 (Ohio 1959) 24
Utah v. *Strieff*, 136 S. Ct. 2056 (2016) 34
Wade v. *State*, 29 S.W.2d 377 (Tex. Crim. App. 1930) 27
Wyoming v. *Houghton*, 526 U.S. 295 (1999) 35
Zobrest v. *Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993) 39

Constitution and statutes:

U.S. Const. Amend. IV ..... *passim*
18 U.S.C. 931(a) 7
18 U.S.C. 931(a)(1) 2, 7
21 U.S.C. 841(a)(1) 2, 7
21 U.S.C. 881(a)(4) 33
Cal. Civ. Code § 1939.01(e)(2) (West Supp. 2017) 40
Mo. Ann. Stat. § 407.730(2)(b) (West 2011) 40
Nev. Rev. Stat. Ann. § 482.31515(2) (LexisNexis 2010) 40
Or. Rev. Stat. § 646A.140(1)(b) (2015) 40

Miscellaneous: Page

Alamo, *Online Check-In Terms and Conditions* (2017), https://www.alamo.com/en_US/car-rental/checkin/terms-and-conditions.html 31

8A Am. Jur. 2d *Bailments* (2009) 22, 23, 26, 28

Avis Preferred, *Rental Terms and Conditions: United States and Canada*, https://www.avis.com/car-rental/html/global/en/terms/AV_Preferred_Rental_Terms_R1_4.20.16.pdf (last updated Apr. 20, 2016) 31

Black's Law Dictionary (10th ed. 2014) 37

Budget, *Fastbreak: Terms and Conditions: United States & Canada*, https://www.budget.com/budgetWeb/html/en/terms/BudgetFastbreaktnc.pdf (last updated Apr. 28, 2017) 31

8 C.J.S. *Bailments* (2005) 22, 23, 25, 26, 28

61A C.J.S. *Motor Vehicles* (2012) 22

Armistead M. Dobie, *Handbook on the Law of Bailments and Carriers* (1914) 22, 23, 26, 27

Dollar, *General Policies* (rev. Aug. 25, 2015), https://m.dollar.com/GeneralPolicies_Dollar.aspx 31

Hertz Corp., *Rental Terms: Rental Qualifications and Requirements* (2014), https://www.hertz.com/rentacar/reservation/reviewmodifycancel/templates/rentalTerms.jsp?KEYWORD=OPERATORS&EOAG=LAX 31

Maven, *Maven Membership Agreement* (2017), https://www.maven.com/us/membership-agreement.html 31

National Emerald Club, *Emerald Club Program*, https://www.nationalcar.com/content/dam/National/Emerald%20Club%20agreement%20December%202014.pdf (last visited Dec. 12, 2017) 31

N. E. Palmer, *Bailment* (1979) 22, 25

Miscellaneous—Continued: Page

Restatement (Second) of Torts:
(1965) 19, 24, 26, 28
(1979) 28
Joseph Story, *Commentaries on the Law of Bailments* (7th ed. 1863) 28
Thrifty, *General Policies and Fee Information* (rev. Nov. 7, 2017), https://www.thrifty.com/AboutUs/content/GeneralPolicies.aspx 31
Zipcar, *Allowed Drivers*, https://support.zipcar.com/hc/en-us/articles/220676487-Allowed-Drivers (last visited Dec. 12, 2017) 31

In the Supreme Court of the United States

No. 16-1371

TERRENCE BYRD, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is not published in the Federal Reporter but is reprinted at 679 Fed. Appx. 146. The opinion of the district court denying petitioner's motion to suppress (Pet. App. 9a-18a) is not published in the Federal Supplement but is available at 2015 WL 5038455.

JURISDICTION

The judgment of the court of appeals was entered on February 10, 2017. The petition for a writ of certiorari was filed on May 11, 2017, and the petition was granted on September 28, 2017. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

Following a conditional guilty plea in the United States District Court for the Middle District of Pennsylvania, petitioner was convicted of possession of heroin with the intent to distribute it, in violation of 21 U.S.C. 841(a)(1), and possession of body armor by a prohibited person, in violation of 18 U.S.C. 931(a)(1). 1 C.A. App. 13. He was sentenced to 120 months of imprisonment, to be followed by three years of supervised release. *Id.* at 14-15. The court of appeals affirmed. Pet. App. 1a-8a.

1. On September 17, 2014, petitioner accompanied Latasha Reed to the Willow Brook Mall in Wayne, New Jersey, so that she could rent a Ford Fusion from Budget Rent A Car System, Inc., a subsidiary of Avis Budget Group, Inc. (Avis). J.A. 18-19, 20, 23, 181; see Pet. App. 10a. The "exact nature" of petitioner's relationship with Reed is "disputed." Pet. App. 10a n.2; see *ibid.* (noting that "Reed is the mother of 'most' of [petitioner's] children" and that he has "referred to her as a 'friend'" but "later claimed that they were engaged") (citations omitted). Petitioner and Reed arranged for Reed to rent the car by herself, without identifying any other potential drivers, and then for petitioner to use the car that she had acquired. J.A. 180-183, 186.

Avis rents its cars only to drivers who satisfy certain criteria. See J.A. 19, 23. At the rental counter, Avis

requires a prospective renter to present a driver's license and certify that the license is "currently valid." *Ibid.*; see J.A. 194. A prospective renter must also certify certain facts about his or her driving history and criminal background—namely, that he or she has "never been convicted of obtaining a vehicle unlawfully, possessing a stolen vehicle, or using a vehicle in a crime or in connection with an unlawful act"; that "within the past 36 months," he or she "ha[s] not had 3 or more accidents" or "been convicted of DWI/DUI/DWAI," "leaving the scene of an accident," "failure to report an accident," or "reckless driving"; and that "within the past 24 months," he or she "ha[s] not had 3 or more convictions for moving violations." J.A. 19, 23. Avis informs the prospective renter that those certifications are "material" to its "decision to rent or permit [him or her] to drive its vehicle." *Ibid.* Petitioner has prior convictions for conduct that includes riding in a stolen van and striking a law-enforcement officer with a vehicle. Presentence Investigation Report (PSR) ¶¶ 39, 41.

Like other rental-car companies, see p. 31 n.*, *infra*, Avis prohibits renters from allowing anyone to drive a rented car who is not specifically authorized to do so under the rental agreement. See J.A. 195-197, 201-202. The rental agreement provides that, other than the renter, the only authorized drivers are (1) the renter's spouse, (2) the renter's co-employee acting on company business, and (3) another person who appears at the time of the rental and signs an authorized driver form. J.A. 19, 24. While still at the rental counter, prospective renters are asked whether "anyone else will be driving the vehicle." J.A. 195. Such "other drivers," who may be added for a fee, "must also be at least 25 years old and validly licensed." J.A. 19, 24; see J.A. 195. The

rental agreement, which lists the renter and additional authorized drivers, J.A. 19, 24, "must stay in the vehicle at all times," J.A. 200. If a renter were to permit an unauthorized person to drive the car, Avis would deem the rental agreement "void," and it "would recover the vehicle." J.A. 201-202.

In this case, petitioner "just sat in [his own] car," J.A. 181, in "front of the building," J.A. 183, while Reed entered the Avis office alone, made the necessary certifications about her own eligibility as a renter, signed the rental agreement, and paid for the rental, Pet. App. 10a; J.A. 19, 23-24. The agreement informed her that if she "provide[d] false or misleading information, [her] use of the vehicle is prohibited and unauthorized." J.A. 19, 23. The agreement also expressly provided, in capital letters, that "PERMITTING AN UNAUTHORIZED DRIVER TO OPERATE THE VEHICLE IS A VIOLATION OF THE RENTAL AGREEMENT." J.A. 19, 24. In addition to signing the agreement itself, Reed separately signed a notice within the agreement that included the statement "[n]o additional drivers allowed without prior written consent." J.A. 18, 22. Reed also initialed a statement that "the only ones permitted to drive the vehicle other than the renter are the renter's spouse, the renter's co-employee (with the renter's permission, while on company business), or a person who appears at the time of the rental and signs an Additional Driver Form." J.A. 19, 24. The agreement contained a space for an "Additional Driver" to sign, which was left blank. *Ibid.*

After completing her transaction, Reed rejoined petitioner. J.A. 187. The two then exchanged cars in the shopping-mall parking lot, with petitioner taking sole possession of the rental car, even though the rental

agreement did not permit him to drive it. *Ibid.* Later that day, petitioner began driving the rental car by himself to Pittsburgh, Pennsylvania, which is six or seven hours away from Wayne. J.A. 57, 140, 182.

2. During that trip, petitioner was stopped by the Pennsylvania state police on Interstate 81 outside of Harrisburg. Pet. App. 10a-11a; J.A. 61-67. A police officer had begun to trail him after perceiving him to be driving a rental car in a suspicious manner. J.A. 62-64. The officer pulled the car over, with the intention of issuing a warning, after observing him violating a Pennsylvania statute prohibiting lane misuse. Pet. App. 6a, 15a & n.6; J.A. 37, 66-67.

When the officer approached the car, he noticed that petitioner was extremely nervous. J.A. 37, 68. He asked petitioner for his driver's license and the rental agreement. J.A. 69. Explaining that he had "washed" his driver's license, *ibid.*, petitioner produced an interim New York driver's license that lacked a photograph, J.A. 37, 70. Petitioner also produced the rental agreement and acknowledged that he himself was not the renter. J.A. 69-70. He stated that, instead, "a friend" had rented the car. J.A. 69.

The officer began processing the information petitioner had provided, with a brief interruption while he and petitioner moved the cars to a safer location a short distance down the highway. J.A. 70-71. When the officer checked petitioner's identification, the computer returned a name different from the one on petitioner's interim license. J.A. 71-72. Around the same time, a second officer arrived. J.A. 72-73, 167-168. While the officers were attempting to sort out the identification issue, petitioner explained that he was traveling to Pittsburgh to visit a woman pregnant with his child.

J.A. 170; 3 C.A. App. 17:30-17:36. He reiterated that the car had been rented by a "friend." J.A. 171.

The officers subsequently observed that petitioner was "not on the renter agreement." 3 C.A. App. 21:37-21:38. They eventually determined that the name returned by the computer was an alias; that petitioner had a lengthy criminal history that included drug and weapons charges; and that petitioner had an outstanding non-extradition arrest warrant in New Jersey for a probation violation. J.A. 74-76. The officers asked petitioner to get out of the rental car, J.A. 76, and patted him down, J.A. 145.

After issuing petitioner a warning for the traffic violation, J.A. 81, and apologizing for the delay, J.A. 76, the officers asked him whether he had anything illegal in the car, J.A. 77. Petitioner said that he did not. J.A. 39. The officers asked for his consent to search the car. *Ibid.* At that point, petitioner stated that he had a "blunt" (which the officers understood to be a reference to a marijuana cigarette) in the car, and he offered to retrieve it. J.A. 39, 77-78. The officers declined to let him do so, but continued to seek consent for a search. J.A. 39, 78. They later testified that the circumstances gave them probable cause to justify a search of the car even without consent, but that it was their practice to seek consent in all cases. J.A. 78, 138, 175-176; see, *e.g.*, *California* v. *Carney*, 471 U.S. 386, 390-392 (1985) (warrantless probable-cause-based search of vehicle is lawful); *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 222 (1973) (warrantless consent-based search is lawful). They told petitioner, however, that they did not actually need his consent to search the car because he was not an authorized driver under the rental agreement. Pet.

App. 12a; J.A. 48, 78. According to the officers, petitioner consented to the search. Pet. App. 12a; J.A. 39, 78, 158. As the search began, petitioner admitted to recently using cocaine. J.A. 40, 78, 173.

The officers opened the trunk and found body armor, J.A. 174-175, which people with certain prior convictions are prohibited from possessing, see 18 U.S.C. 931(a). In light of that discovery, petitioner's continued nervous behavior, and his criminal history, the officers decided to detain, but not arrest, petitioner. J.A. 174-175. After petitioner was informed that he would be placed in handcuffs for purposes of such detention, petitioner attempted to flee on foot. J.A. 79-80, 175. The officers (who had been joined by a third off-duty officer) caught up with him and arrested him. J.A. 80.

After resuming the search, the officers found 49 bricks of heroin in the trunk. J.A. 40, 80; see Pet. App. 4a. The rental car was towed to Harrisburg. J.A. 80.

3. A federal grand jury in the United States District Court for the Middle District of Pennsylvania returned an indictment charging petitioner with one count of possession of heroin with the intent to distribute it, in violation of 21 U.S.C. 841(a)(1), and one count of possession of body armor by a prohibited person, in violation of 18 U.S.C. 931(a)(1). 2 C.A. App. 27-29.

Petitioner moved to suppress the evidence obtained from the rental car on Fourth Amendment grounds. Pet. App. 9a; 2 C.A. App. 30-33. After conducting an evidentiary hearing, which included testimony from an Avis representative, the district court denied the motion. Pet. App. 18a; see J.A. 191-205. The court determined, as an initial matter, that the evidence was not the fruit of an unlawful seizure, because the stop had been based on the observation of a traffic violation and

had not been unreasonably prolonged. Pet. App. 14a-18a. The court additionally determined that petitioner had "no expectation of privacy in the car" that would permit him to challenge the officers' search of it. *Id.* at 13a. The court observed that petitioner "was not a party to the rental agreement" and "did not pay for the rental." *Ibid.*

Petitioner entered a conditional guilty plea to the charges, reserving his right to appeal the denial of his suppression motion. Pet. App. 2a. The Probation Office's presentence report described Reed as petitioner's "former girlfriend" and recounted petitioner's statement that "he ha[d] been romantically involved" with a different woman, who lives in Pennsylvania, "intermittently for five years." PSR ¶¶ 79-80. The district court imposed a ten-year prison sentence. 1 C.A. App. 14.

4. The court of appeals affirmed. Pet. App. 1a-8a. The court upheld the district court's determination that the stop was lawful, *id.* at 5a-8a, and rejected petitioner's challenge to the search, *id.* at 8a. The court of appeals explained that "the sole occupant of a rental vehicle" has no "Fourth Amendment expectation of privacy when that occupant is not named in the rental agreement," and may not "challenge a search of th[at] vehicle." *Ibid.* The court cited circuit precedent holding that "society generally does not share or recognize an expectation of privacy for those who have gained possession and control over a rental vehicle they have borrowed without the permission of the rental company." *Ibid.* (quoting *United States* v. *Kennedy*, 638 F.3d 159, 168 (3d Cir. 2011), cert. denied, 565 U.S. 1110 (2012)).

SUMMARY OF ARGUMENT

The court of appeals correctly recognized that petitioner did not have "a legitimate expectation of privacy," *Rakas* v. *Illinois*, 439 U.S. 128, 143 (1978), in a rental car that he had no legitimate basis to drive. Reed could not authorize him to drive Avis's car, and taking it without authorization did not make it his own "effect[]" for purposes of the Fourth Amendment. U.S. Const. Amend. IV.

Petitioner's argument rests on the untenable premise that he is entitled to Fourth Amendment rights for doing something that he was not allowed to do. This Court's precedent makes clear that had he been a passenger in a car that someone else had rented, he would have had no right to challenge the search of its trunk. See *Rakas*, 439 U.S. at 148-149. Taking the wheel without permission and leaving behind the actual renter did not give him additional constitutional protection. Someone who is not "'legitimately on premises,'" such as someone who is driving "a stolen automobile," cannot challenge a search of those premises. *Id.* at 141 n.9 (citation omitted). Petitioner cannot claim to have been "legitimately on premises" here, where Reed's transfer of Avis's car violated an express written directive from the rightful owner.

Even if petitioner could satisfy the threshold requirement of legitimate presence, he cannot carry his further burden to show a legitimate expectation of privacy. He cannot establish any enforceable property rights in Avis's car, given that Reed could not legitimately allow him to take it. Indeed, traditional common-law principles suggest the transfer here was affirmatively unlawful. And although it is possible to have a reasonable expectation of privacy in the absence of

property rights, petitioner cannot establish that society would recognize non-property-based privacy rights in his appropriation of someone else's car. Reed's handover of the car was at the very least a breach of contract, in derogation of Avis's own right to decide whom it will entrust to drive its cars. It is common knowledge that car rental is a personal transaction that does not make the car available for general enjoyment, and strawman car rentals disserve society by frustrating law-enforcement efforts to prevent smuggling and other crimes.

Petitioner errs in contending (Br. 14, 20-26) that he acquired a constitutionally protected interest in Avis's car simply by asserting "possession and control" over it. If that alone were the test, then even Reed's putative permission would be irrelevant; indeed, even a car thief would have Fourth Amendment rights. In any event, petitioner's position insupportably suggests that he could himself bequeath Fourth Amendment rights in the car to subsequent transferees and that those rights would remain with the car no matter how long the rightful owner was divested of its property. His approach would also create an anomalous regime in which someone has more Fourth Amendment rights when the actual renter is not present than when she is, and in which those rights can appear and disappear on a moment's notice. And his further suggestion that he has special Fourth Amendment rights by virtue of his relationship with Reed, the nature of which is disputed, is neither properly presented nor legally sustainable.

ARGUMENT

PETITIONER HAD NO FOURTH AMENDMENT INTEREST IN A RENTAL CAR THAT HE WAS PROHIBITED FROM DRIVING

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches." U.S. Const. Amend. IV. It does not, however, allow people to challenge searches of "effects" that are not "their[s]," and petitioner's unauthorized possession of Avis's rental car did not in any sense make that car his or give him a reasonable expectation of privacy in it. Petitioner did not own the car, had not rented it, and was not allowed to drive it. He cannot assert Fourth Amendment rights to object to its search.

A. Petitioner's Illegitimate Presence In Avis's Car Cannot Support A Fourth Amendment Claim

Petitioner's only ground for asserting a Fourth Amendment interest in the search of Avis's car is the fact that he was driving it, in violation of the rental agreement. This Court has never recognized a Fourth Amendment claim premised on prohibited activity. It should not do so here.

1. As the constitutional text makes clear, "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." *Rakas* v. *Illinois*, 439 U.S. 128, 133-134 (1978) (citation omitted). It has therefore "long been the rule that a defendant can urge the suppression of evidence obtained in violation of the Fourth Amendment only if that defendant demonstrates that *his* Fourth Amendment rights were violated by the challenged search."

United States v. *Padilla*, 508 U.S. 77, 81 (1993) (per curiam); see, *e.g.*, *Alderman* v. *United States*, 394 U.S. 165, 171-172 (1969) ("The established principle is that suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence.").

Absent the existence of recognized property rights capable of invasion through "physical intrusion," *Florida* v. *Jardines*, 569 U.S. 1, 5 (2013) (citation omitted); *United States* v. *Jones*, 565 U.S. 400, 404 (2012), the touchstone of such a demonstration is an affirmative showing that the defendant had a "legitimate expectation of privacy in the invaded place," *Minnesota* v. *Olson*, 495 U.S. 91, 95 (1990) (quoting *Rakas*, 439 U.S. at 143); see *Rawlings* v. *Kentucky*, 448 U.S. 98, 104 (1980) (recognizing that a defendant "bears the burden of proving * * * that he had a legitimate expectation of privacy"). For a "subjective expectation of privacy" to be "legitimate," it must be "one that society is prepared to recognize as reasonable." *Olson*, 495 U.S. at 95-96 (citations and internal quotation marks omitted); see *Katz* v. *United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). That is, it must be "one that has 'a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.'" *Minnesota* v. *Carter*, 525 U.S. 83, 88 (1998) (quoting *Rakas*, 439 U.S. at 144 n.12).

Applying that framework, this Court held in *Rakas* v. *Illinois*, *supra*, "that automobile passengers could not assert the protection of the Fourth Amendment against the seizure of incriminating evidence from a vehicle

where they owned neither the vehicle nor the evidence." *Carter*, 525 U.S. at 87-88 (citing *Rakas*, 439 U.S. at 139-140). Although the passengers were "'legitimately on the premises' in the sense that they were in the car with the permission of its owner," *Rakas*, 439 U.S. at 148 (brackets omitted), they "neither owned nor leased" the car, *id.* at 140, and "asserted neither a property nor a possessory interest in the automobile, nor an interest in the property seized," *id.* at 148. They had thus "made no showing that they had any legitimate expectation of privacy in the glove compartment or area under the seat of the car," from which the incriminating evidence had been gathered. *Ibid.* "Like the trunk of an automobile," the Court explained, "these are areas in which a passenger *qua* passenger simply would not normally have a legitimate expectation of privacy." *Id.* at 148-149.

2. The analysis in *Rakas* forecloses petitioner from establishing a legitimate expectation of privacy in the trunk of a rental car he neither owns nor leases simply by taking control of the rental car illegitimately—that is, without the owner's authorization and contrary to the rental contract.

A primary argument of the passengers in *Rakas* rested on the Court's statement in *Jones* v. *United States*, 362 U.S. 257 (1960), that "anyone legitimately on premises where a search occurs may challenge its legality." *Rakas*, 439 U.S. at 141 (quoting *Jones*, 362 U.S. at 267). The Court in *Rakas* rejected the defendants' reliance on *Jones*, in which the Court had allowed Jones to challenge "the search of an apartment * * * owned by a friend" who "had given Jones permission to use [it]" for purposes including storage of possessions and an overnight stay. *Ibid.* The Court in *Rakas* explained that, outside the specific context of *Jones*, "the phrase

'legitimately on premises' * * * creates too broad a gauge for measurement of Fourth Amendment rights." *Id.* at 142; see *Olson*, 495 U.S. at 97 ("[T]he 'legitimately on the premises' standard was rejected in *Rakas* as too broad.") (brackets omitted). Legitimate presence, *Rakas* makes clear, is a necessary, but not a sufficient, foundation for asserting Fourth Amendment rights. See 439 U.S. at 140-149.

The Court in *Rakas* emphasized its prior recognition in *Jones* that "one wrongfully on the premises could not move to suppress evidence obtained as a result of searching them." *Rakas*, 439 U.S. at 141 (citing *Jones*, 362 U.S. at 267). "The Court in *Jones*," *Rakas* explained, "was quite careful to note that 'wrongful' presence at the scene of the search would not enable a defendant to object to the legality of the search." *Id.* at 141 n.9 (quoting *Jones*, 362 U.S. at 267). That is because "by virtue of [his] wrongful presence," the defendant "cannot invoke the privacy of the premises searched." *Ibid.* (quoting *Jones*, 362 U.S. at 267) (emphasis omitted). The Court additionally explained that, in light of its previous "clear statement" of that principle, it would be "inexplicabl[e]" to think that "a person present in a stolen automobile at the time of a search may object to the lawfulness of the search of the automobile." *Ibid.*

3. Petitioner's sole excursion in Avis's car does not satisfy the legitimate-presence prerequisite for a Fourth Amendment claim. Petitioner has never identified any legitimate basis for him to take the car to Pittsburgh. He knew that the car was a rental and that he was not the renter; he waited outside the Avis office while Reed went inside by herself to rent the car. J.A. 69, 171, 181, 183. It is also uncontested that he was "not listed as an authorized driver on the rental agreement,"

Pet. Br. i; in renting the car, Reed did not add him as an additional driver, J.A. 19, 24. When they switched cars in the parking lot and petitioner began to "operate the vehicle," that was a clear "violation" of the express terms "of the rental agreement." *Ibid.* (capitalization omitted); see J.A. 187. Had they not hidden their swap of the vehicles from Avis, their subterfuge would have led Avis to consider the rental agreement "void" and to "recover the vehicle." J.A. 201-202.

Petitioner contends (Br. 34-35) that the "fact that he was not authorized by the contract to *drive* the car is beside the point" because he could have "possess[ed], stor[ed] possessions in, or exclud[ed] others from the vehicle" whether he was the driver or not. That contention cannot be squared with *Rakas*. Under *Rakas*, even an authorized passenger, when he is neither the owner nor the renter of a car, has no Fourth Amendment interest in its trunk (where the contraband in this case was found). See 439 U.S. at 148-149. Petitioner's claim to rights greater than those of an authorized passenger thus necessarily hinges on the assertion of some more significant connection to the car. But any such connection would have to be based on his presence as the driver—the very thing the rental agreement rendered illegitimate and unauthorized.

Petitioner would disregard (Br. 33) the express prohibitions of the rental agreement on the theory that rental-car companies "know and expect" some unauthorized drivers to operate their rental cars. But Avis's recognition that some renters will breach the rental agreement in that manner, and its specification of the insurance-coverage consequences of such a breach, see *ibid.* (citing J.A. 19), does not negate the agreement's explicit designation of "the only ones permitted to drive

the vehicle other than the renter" or its plain and emphatic instruction that "PERMITTING AN UNAUTHORIZED DRIVER TO OPERATE THE VEHICLE IS A VIOLATION OF THE RENTAL AGREEMENT," J.A. 19, 24; see J.A. 18-19, 22, 24 (similar terms). Rather, those consequences enforce Avis's prohibition of unauthorized drivers. And the steps that Avis takes to authenticate the renter and identify additional drivers, J.A. 194-198, and to "recover the vehicle" when unauthorized operation renders the rental agreement "void," J.A. 201-202, refute any notion that it is indifferent to who drives its cars.

4. To the extent that petitioner suggests (Br. 35) that a defendant satisfies the legitimate-presence requirement so long as his actions do not amount to criminal activity, that suggestion is misguided. Petitioner knew that the car belonged to Avis, that Reed alone had rented it, and that he had done nothing to gain Avis's permission to operate it. He thus had no legal basis for driving it. Whether or not his actions carried legal consequences precisely identical to theft, see Part B.1, *infra*, petitioner's operation of the car by himself in contravention of the rental agreement cannot be considered legitimate. Nor could or did the officers make it so by asking him to move the car for safety purposes during the course of the stop, see Pet. Br. 35—apparently before discovering that he was not an authorized driver, see 3 C.A. App. 7:39 (cars moved); *id.* at 21:37-21:38 (remark that petitioner was "not on the renter agreement"). At a minimum, petitioner's unauthorized assertion of control over the car should not give him a greater Fourth Amendment interest in it than a legitimately present passenger would have.

Petitioner objects (Br. 29) to considering the terms of a "private agreement" in this context, but his reluctance is at odds with the text, history, and judicial interpretation of the Fourth Amendment. As a textual matter, many interests in "effects" (or "houses"), U.S. Const. Amend. IV, are created and defined by underlying private agreements, such as a bill of sale, lease agreement, or oral arrangement. As a historical matter, the "significance of property rights in the search-and-seizure analysis," *Jones*, 565 U.S. at 405, likewise counsels respect for the limitations that the rightful owner of property places on the persons who may be present there. And as a jurisprudential matter, this Court's consideration of whether a defendant was "legitimately on the premises," *Olson*, 495 U.S. at 97 (brackets and citation omitted), has relied on private agreements governing the defendant's access to the premises in question. *Jones*, for example, turned on Jones's friend's (presumably oral) "consent to [Jones's] presence" in, and use for certain purposes of, his apartment. 362 U.S. at 267; see *id.* at 265 (emphasizing that defendant "was present in the apartment with the permission of [his friend], whose apartment it was"); see also, *e.g.*, *Olson*, 495 U.S. at 99 (emphasizing that defendant had "the permission of his host[s]" to be a "houseguest"); *Rawlings*, 448 U.S. at 105 (addressing argument that oral agreement created a bailment).

Indeed, petitioner's own argument that he was legitimately present in the car rests on private agreements—namely, the written agreement in which Avis consented to rent the car to Reed and the (oral or implicit) agreement in which Reed gave her own permission for petitioner to drive it. Petitioner acknowledges (Br. 35) that if his actions technically amounted to theft, he would

have no legitimate expectation of privacy in Avis's car. His only basis for distinguishing his actions from theft is that Reed rented the car and then purported to allow him to drive it away. But Reed's own rights in the car are based solely on the rental agreement, which forbade her from doing that. Petitioner would thus rely on the rental agreement to make his actions legitimate while ignoring the express terms of the agreement making those actions illegitimate. He cannot have it both ways.

Petitioner's objection to determining legitimacy by reference to the terms of a written agreement is particularly misplaced because the existence of such an agreement makes the determination relatively easy. Although petitioner suggests (Br. 43) that looking to such agreements is "highly impractical," this Court has previously analyzed oral agreements, and the inquiry will often be even more straightforward when the terms of the agreement are reduced to writing. See *Carter*, 525 U.S. at 86 (unwritten agreement to package cocaine in someone's apartment); *Rawlings*, 448 U.S. at 101 & n.1 (asserted, but disputed, oral agreement to put property in a purse). The relative clarity of a written agreement will aid not only courts reviewing suppression motions, but also (to the extent it might be necessary) facilitate interactions between the police and motorists in the field. The rental agreement here, for example, had to "stay in the vehicle at all times," J.A. 200, and it explicitly stated who was permitted to drive the car, J.A. 19, 24; see also Pet. Br. 41 ("[R]ental companies typically provide customers with a hard copy of a one-to-two page addendum, which serves as the functional equivalent of the car's registration in the event that a customer interacts with law enforcement."). The officers here had no apparent difficulty determining that petitioner was

driving a car without authorization, 3 C.A. App. 21:37-21:38, and could have contacted the rental-car company with any questions, J.A. 200.

5. Petitioner errs in suggesting (Br. 35-38) that disallowing his Fourth Amendment claim here would require disallowing the claims of legitimate renters who may have committed minor breaches of the rental agreement. Petitioner, who had no basis for taking the wheel and treating Avis's car as his own, is differently situated from a legitimate renter to whom Avis has in fact entrusted its car.

The complete absence of a legitimate justification to drive a car is different in kind from restrictions on a legitimate driver's activities. Contractual prohibitions on, for example, hand-held cellphone use, driving without a seat belt, or using the incorrect fuel (Pet. Br. 36, 39) are not inherently directed at the driver's possessory interest. See, *e.g.*, Restatement (Second) of Torts §§ 228, 234 (1965) (distinguishing "[e]xceeding [a]uthorized [u]se" of a chattel from "[m]isdelivery" to someone not entitled to receive it); see also *Fojtik* v. *Hunter*, 828 A.2d 589, 593 (Conn. 2003) (explaining that, for purposes of rental-car company's statutory vicarious liability, state law "recognize[s] a distinction * * * between an authorized driver who breaches the terms of the lease agreement yet still has lawful possession, and an unauthorized driver who is not in lawful possession of the vehicle"). The violation of such a provision does not have direct bearing on *who* may operate the car, and it does not call into question the renter's initial authority to do so—authority petitioner never at any point acquired.

Petitioner's examples (Br. 37) involving breaches of the terms of residential leases are even further afield. This Court has "on numerous occasions pointed out that

cars are not to be treated identically with houses or apartments for Fourth Amendment purposes." *Rakas*, 439 U.S. at 148; see, *e.g.*, *South Dakota* v. *Opperman*, 428 U.S. 364, 367 (1976) ("This Court has traditionally drawn a distinction between automobiles and homes or offices in relation to the Fourth Amendment."). And even in the context of dwellings, this Court's Fourth Amendment precedents support a distinction between legitimate occupants who violate the terms of occupancy and those who are not legitimately present to begin with. Compare, *e.g.*, *Chapman* v. *United States*, 365 U.S. 610, 616-618 (1961) (concluding that, even with landlord's permission, warrant was required to enter leased home being used for criminal purposes), with *Rakas*, 439 U.S. at 143-144 n.12 (observing that "burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as 'legitimate'").

That distinction is even clearer in the context of a car. A car's "function is transportation and it seldom serves as one's residence or as the repository of personal effects." *New York* v. *Class*, 475 U.S. 106, 112-113 (1986) (citation omitted). Someone present in a car is either a driver, who requires legitimate authorization, or a passenger, who would not have Fourth Amendment rights in the car's trunk, see *Rakas*, 439 U.S. at 148-149. When he drove off alone, petitioner was not a legitimately present person who was merely engaging in an unpermitted activity. He was someone whose very presence in the car, impermissibly asserting sole dominion over its core function, was illegitimate.

B. Neither Property Rights Nor Societal Expectations Support Petitioner's Assertion Of A Fourth Amendment Interest In Avis's Car

Even assuming it were not foreclosed by the legitimate-presence rule, petitioner's claim to a legitimate expectation of privacy in Avis's car lacks foundation. Petitioner cannot show that any expectation of privacy had "a source outside of the Fourth Amendment," either in "concepts of * * * personal property law" or in "understandings that are recognized and permitted by society." *Carter*, 525 U.S. at 88 (citation omitted); see *Rawlings*, 448 U.S. at 104 (recognizing that defendant must affirmatively prove legitimate expectation of privacy). Petitioner had no relevant property rights in the car and his unauthorized use of it was in no way "permitted."

1. Petitioner had no enforceable property rights in a car he was not allowed to drive

This Court's examination of property rights in the context of the Fourth Amendment has focused on the law of trespass or the defendant's "right to exclude" others from the property that was searched. *Rawlings*, 448 U.S. at 105; see, *e.g.*, *Jones*, 565 U.S. at 406 ("[F]or most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas * * * it enumerates."); *Rakas*, 439 U.S. at 144 n.12 ("One of the main rights attaching to property is the right to exclude others, and one who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of this right to exclude.") (citation omitted). Those sources of law do not support petitioner's assertion of a Fourth Amendment interest in Avis's car.

a. A rental agreement is a bailment in which the rental-car company is the bailor and the renter is the

bailee. 61A C.J.S. *Motor Vehicles* § 1884, at 520 (2012). The bailment is one for mutual benefit, in which the rental-car company gives the renter temporary custody of its property (the rental car) and the renter pays a fee and agrees to return the property at a specified time. 8 C.J.S. *Bailments* § 15, at 391-393 (2005).

The rental agreement in this case is also a particular type of bailment, one that is "personal to the bailee." Armistead M. Dobie, *Handbook on the Law of Bailments and Carriers* § 49, at 114 (1914) (Dobie). In "permit[ting] [Reed] to drive its vehicle," J.A. 19, 23, Avis (the bailor) placed its "confidence" in Reed (the bailee) "personally," Dobie § 49, at 114. Avis decided to let Reed rent a car only after reviewing her driver's license, and seeking information about her driving history and criminal background, to ensure that she was an appropriate driver. J.A. 19, 23; see J.A. 194-197 (describing Avis's typical rental procedures). Someone like petitioner, with a history of criminal offenses involving vehicles, would have to make false statements in order to rent one of Avis's cars. See p. 3, *supra*.

"[A]s a general rule, a bailee has no right to delegate the right to use the property to another person, unless there is some understanding or agreement to that effect." 8A Am. Jur. 2d *Bailments* § 84, at 608 (2009); see 8 C.J.S. *Bailments* § 43, at 439 (§ 44 on Westlaw) ("In the absence of statute or of an agreement, either express or implied, giving him or her such power, the bailee cannot sell, pledge or mortgage, exchange, or give away the bailed property, or otherwise expressly or impliedly transfer it.") (footnotes omitted). That limitation is inherent in bailments that are personal to the bailee. See 8A Am. Jur. 2d *Bailments* § 57, at 580; N. E. Palmer, *Bailment* 753 (1979) (Palmer) ("In many

cases, such as the hire of a car from a rental company by a private consumer, it seems that the hirer's right will be a personal one and incapable of alienation, especially perhaps where questions of insurance are involved."). And as this case exemplifies, rental-car companies typically cement that limitation by making it explicit in the agreement through a provision that expressly prohibits the renter from delegating the right to drive the car to any person without authorization. See J.A. 19, 24; see also p. 31 n.*, *infra*; 8 C.J.S. *Bailments* § 3, at 370 ("[A]s a general rule, the rights, duties, and liabilities of a bailor and bailee must be determined from the terms of the contract between the parties."). The rental agreement in this case admonished the renter in three separate places—one in all capital letters—not to permit any unauthorized drivers to operate the car. J.A. 18-19, 22, 24.

b. As a bailee, a legitimate renter acquires certain property rights in the car, including the right to sue for a trespass to chattels, for the term of the bailment. See, *e.g.*, 8A Am. Jur. 2d *Bailments* § 166, at 685-686; cf. *Jones*, 565 U.S. at 404 n.2 (reasoning that defendant "had at least the property rights of a bailee" in his wife's Jeep for purposes of trespass analysis). An illegitimate driver like petitioner, however, would have no such rights. Indeed, under traditional common-law principles, an unauthorized rental-car driver could *himself* be considered a trespasser. See Dobie § 49, at 114 ("An attempt * * * by the bailee to transfer his interest to a third person * * * would * * * give the bailor the right to * * * bring * * * trespass against such transferee, who took possession of the chattel.").

Petitioner attempts (Br. 43-48 & n.12) to provide a property-law basis for his Fourth Amendment claim by

asserting that Reed's permission to take the car "created a subsidiary bailment, sometimes called a 'subbailment,'" that made him a subbailee with a "possessory property interest" in Avis's car. But Reed's lack of authority to give—and binding obligation *not* to give—that permission divests it of any such legal effect. "The transaction by which one person receives possession of the chattel of another is ineffectual if"—as is the case here—"the person delivering the chattel is without authority from the owner to transfer the property interest in the goods, and has no other power so to transfer them." Restatement (Second) of Torts, § 229 cmt. d.

The cases petitioner cites (Br. 46-47) do not show otherwise. In three of them, the authority of the bailee to transfer the property to a third person was not questioned. See *Siverson* v. *Martori*, 581 P.2d 285, 287 (Ariz. Ct. App. 1978) ("[I]t is undisputed that [the bailors] had no control over [the bailee's] use of [the property]."); *Revillon Freres* v. *Cassell Trucking Co.*, 264 N.Y.S.2d 24, 25 (App. Div. 1965) (per curiam) (explaining that the "only issue" was whether an "agent" of the subbailee was entitled to the benefit of a "limitation of liability" entered into between the bailee and the subbailee); *United States Fire Ins. Co.* v. *Paramount Fur Serv., Inc.*, 156 N.E.2d 121, 126-127 (Ohio 1959) (explaining that the plaintiff, the bailor's insurer, elected not to allege that the bailee lacked the authority to enter into a subbailment); *United States Fire Ins. Co.*, 156 N.E.2d at 130 (Zimmerman, J., dissenting) (same). In the fourth case, the court addressed only the property rights of the bailee (not the putative subbailee), concluding that she maintained "constructive possession" of the property, notwithstanding the creation of any subbailment. *Moreno* v. *Idaho*, No. 15-cv-342, 2017 WL

1217113, at *5 (D. Idaho Mar. 31, 2017). Additional state decisions cited by petitioner's amici (Nat'l Ass'n for Pub. Def. & Nat'l Ass'n of Fed. Defenders Amicus Br. 23) are similarly inapposite. See *State* v. *Webber*, 105 P.3d 279, 2005 WL 283585, at *4 (Kan. Ct. App. Feb. 4, 2005) (Tbl.) (per curiam) (no restriction on transfer of rental car); *State* v. *Sanders*, 614 P.2d 998, 1003 (Kan. Ct. App. 1980) (same); see also *Hall* v. *State*, 477 S.E.2d 364, 366 (Ga. Ct. App. 1996) ("accept[ing]" *arguendo* defendant's suggestion to "ignore" rental agreement's restrictions for purposes of legal analysis).

c. Far from creating legal rights in the putative subbailee, the unauthorized transfer of a rental car may amount to a tort—or, potentially, even a crime.

The treatise on which petitioner himself relies for his subbailment argument explains that "a bailee who, wrongfully and without authority, sub-bails the goods to an independent third party * * * commit[s] a conversion." Palmer 146. It defines a subbailment as a transfer of goods by the bailee "with or without the authority of [the] bailor" only for the purpose of "assess[ing] the *responsibilities*"—not the *rights*—of the transferee. *Id.* at 786 & n.3 (emphasis added); see *id.* at 786 n.3 (observing that those responsibilities are "substantially similar whether or not the sub-bailment is authorised"). It instead explains that "the lack of authority to sub-bail * * * may, if known to the * * * [sub]bailee, make his reception of the goods," like the bailee's transfer of them, "a conversion." *Id.* at 786 n.3.

Although the rule is not universal, other authorities agree that "any attempt on the part of the bailee to part with the title or possession of the subject matter of the bailment in violation of the contract of bailment * * * constitutes a conversion." 8 C.J.S. *Bailments* § 43, at

439 (§ 44 on Westlaw); see Restatement (Second) of Torts § 234 ("A bailee * * * who makes an unauthorized delivery of a chattel is subject to liability for conversion to his bailor * * * unless he delivers to one who is entitled to immediate possession of the chattel."); 8A Am. Jur. 2d *Bailments* § 57, at 579 (explaining that a "transfer" of the "use or enjoyment" of the "bailed property" "to another," "which is not authorized by the terms of the bailment," "constitutes a conversion"); see also *Discover Prop. & Cas. Ins. Co.* v. *University of Vt. & State Agric. Coll.*, No. 06-cv-22, 2009 WL 4505497, at *6 (W.D. Va. Dec. 2, 2009) (reasoning that the operation of a rental car by an unauthorized driver was "so removed from the purpose of the loan of the vehicle that it might be classified as a temporary tortious conversion"). But see, *e.g.*, *Dockery* v. *Enterprise Rent-A-Car Co.*, 796 So. 2d 593, 596-599 (Fla. Dist. Ct. App. 2001) (finding unauthorized driver's actions not conversion in context of determining rental-car company's liability to accident victim); *Kender* v. *Auto-Owners Ins. Co.*, 793 N.W.2d 88, 95 (Wis. Ct. App.) (finding unauthorized driver to be covered by omnibus insurance policy in absence of "evidence that he intended to steal or convert the vehicle"), review denied, 791 N.W.2d 381 (Wis. 2010) (Tbl.).

In the event of a conversion, the bailor may be able to sue not only the bailee, but also the person who took possession of the property and "knowingly participated in the bailee's diversion of [it]." 8 C.J.S. *Bailments* § 111, at 546; see Dobie § 49, at 114 (explaining that a bailor may "bring trover" against the unauthorized "transferee"). And in some jurisdictions and circumstances, the unauthorized driver of a rental car could be prosecuted for a crime, such as theft or unauthorized use of a motor vehicle. See *State* v. *Pinkston*, No. 103833,

2016 WL 4399396, at *2 (Ohio Ct. App. Aug. 18, 2016) ("In order to be found guilty of the unauthorized use of a motor vehicle, the state need only prove that the defendant knowingly used a motor vehicle without the consent of Hertz, the owner, or Hertz's representative, the person authorized to give Hertz's consent."); *Wade* v. *State*, 29 S.W.2d 377, 378-379 (Tex. Crim. App. 1930) (upholding conviction of unauthorized driver for theft). But see, *e.g.*, *Commonwealth* v. *Campbell*, 59 N.E.3d 394, 402 (Mass. 2016) (concluding that "[a] renter's decision to allow a person who is not a permitted driver according to the rental agreement to drive a rental vehicle" does not "result in a violation of criminal law"); *State* v. *Bass*, 300 P.3d 1193, 1195 (Okla. Crim. App. 2013) (concluding that unpermitted rental-car driver had not committed felony of unauthorized use of a vehicle).

d. Additional common-law remedies available against the unauthorized driver of a rental car reinforce petitioner's lack of any cognizable property right in Avis's car.

Where, as here, "the bailment is personal to the bailee by virtue of confidence reposed in him personally," any attempt by the bailee "to transfer his interest to a third person" would "give the bailor the right to put an end to the bailment"—and may be deemed to end it automatically. Dobie § 49, at 114; see also *Gwin* v. *Emerald Co.*, 78 So. 758, 760 (Ala. 1918) (explaining that when a bailment "imports a personal trust which cannot be transferred," "any attempt on the part of the bailee * * * to part with the title or possession of the subject-matter of the bailment * * * is regarded as putting an end to the bailment") (citation omitted). Consistent with that principle, Avis considers a rental agreement to be "void" if an unauthorized driver takes the wheel. J.A. 201.

Upon termination of the bailment, the right of immediate possession reverts to the bailor. See Restatement (Second) of Torts § 272 cmt. a; 8A Am. Jur. 2d *Bailments* § 202, at 720; 8 C.J.S. *Bailments* § 121, at 559-560 (§ 120 on Westlaw); Joseph Story, *Commentaries on the Law of Bailments* § 396, at 320-321 (7th ed. 1863). And in seeking return of the property, the bailor could enlist the aid of law enforcement to seize it. See Restatement (Second) of Torts § 946 cmt. a (1979) (explaining that action for replevin would "authorize[] the sheriff to seize the [property] and deliver" it to the rightful owner, even "before trial"); see also *id.* § 922 cmt. b; 8 C.J.S. *Bailments* § 152, at 613 (§ 148 on Westlaw).

Thus, under the common law, petitioner's possession and use of Avis's car was possible only insofar as he was able (illegitimately) to conceal his actions from Avis. In driving the car, he faced the constant threat of discovery and dispossession of the vehicle by law enforcement. Cf. *California* v. *Carney*, 471 U.S. 386, 392 (1985) (explaining that "reduced expectations of privacy" in cars "derive" in part from "the pervasive regulation of vehicles capable of traveling on the public highways"). Even in the absence of a prior police report by Avis, a lawful traffic stop could lead Avis to ask, as rental-car companies often do, that steps be taken to preclude the unauthorized driver from occupying the car and to return the car to its rightful owner. See, *e.g.*, *United States* v. *Lamar*, 562 Fed. Appx. 802, 803 (11th Cir. 2014) (per curiam) (upon learning that unauthorized driver was operating rental car, "rental agency requested that its property be returned"); *United States* v. *Mincey*, 321 Fed. Appx. 233, 236 (4th Cir. 2008) (similar), cert. denied, 558 U.S. 945 (2009); *United States* v. *Gilliam*, No. 12-cr-93, 2016 WL 704702, at *2 (W.D. Pa. Feb. 23,

2016) (similar); *United States* v. *Lumpkins*, No. 11-cr-54, 2011 WL 3320530, at *3 (W.D. Mo. July 6, 2011) (similar). Property law cannot reasonably provide a basis for recognizing a legitimate expectation of privacy in such circumstances.

2. No societal understanding provided petitioner with a reasonable expectation of privacy in his unauthorized operation of Avis's car

Although a defendant can sometimes establish a legitimate expectation of privacy without showing "a common-law interest in real or personal property," *Rakas*, 439 U.S. at 144 n.12, petitioner has not done so here. The "personal and societal values protected by the Fourth Amendment," *Oliver* v. *United States*, 466 U.S. 170, 182-183 (1984), do not support petitioner's assertion of constitutional rights in Avis's car. Operation of a rental car in the circumstances here does not serve any "functions recognized as valuable by society," *Olson*, 495 U.S. at 98, but is instead detrimental to property rights, commerce, and public safety. Any expectation of privacy petitioner may have had was therefore not "one that society is prepared to recognize as reasonable." *Id.* at 96 (citations and internal quotation marks omitted).

a. As a threshold matter, to the extent that the unauthorized transfer or use of a rental car constitutes a tort or a crime, society has decided not to countenance it. Tort law and criminal law define the rules through which society regulates primary conduct. It makes no sense for the law to impose civil or criminal liability for an act and yet recognize it as one that creates a "legitimate expectation of privacy," *Carter*, 525 U.S. at 88 (citation omitted).

b. At a minimum, petitioner's appropriation of Avis's car was a breach of contract lacking any justification

that could outweigh the important interests that the breached contractual provisions seek to preserve. Like any property owner, rental-car companies have an interest in ensuring that their property is used responsibly. Without the ability to ensure that their cars are being driven by those qualified to do so, rental-car companies face increased risks—not only of accident and injury, but also "of theft, of the car not being returned, of the car being taken to an unauthorized location * * * [,] and of the car being used for unauthorized purposes." *Planet Ins. Co.* v. *Wong*, 877 P.2d 198, 202 (Wash Ct. App.), review denied, 889 P.2d 498 (Wash. 1994) (Tbl.). The rental agreement here accordingly restricted operation of the car to the renter and a limited set of persons—a spouse or a co-employee on company business—who would have a marriage or business-based legal connection to the renter, and for whom the renter could vouch and act as the point person. See J.A. 19, 24.

When petitioner took over Reed's rental car in breach of the rental agreement, without any foundation for believing that the rental-car company had consented to the transfer, he could not claim any expectation of privacy in the car that society would regard as objectively reasonable. Commercial rental cars are typically easy for potential drivers to identify. See, *e.g.*, *United States* v. *Kennedy*, 638 F.3d 159, 161 (3d Cir. 2011) (noting that "rental key" was "inscribed with the Kulp Car Rental insignia"), cert. denied, 565 U.S. 1110 (2012); *Hill* v. *Commonwealth*, No. 2016-CA-276, 2017 WL 3328117, at *1 (Ky. Ct. App. Aug. 4, 2017) (noting that keychain had "tag connected to it showing a Hertz Rental Car logo"); *State* v. *Huddleston*, 877 N.E.2d 354, 356 (Ohio Ct. App. 2007) (noting that "[b]ased on the keychain, the vehicle

was identified as a rental car"). Petitioner certainly knew that he was driving a rental car, given that he acquired it from Reed in the parking lot outside the rental office and acknowledged to the police that a "friend" had rented it. J.A. 69; see J.A. 181, 183. It is, in addition, common knowledge that commercial rental companies like Avis do not offer up their vehicles for general enjoyment, but instead allow the use of their cars based on specific transactions with specific customers. Restrictions on who may drive a rental car are ubiquitous in the industry.* The record in this case establishes that Avis both discusses the issue with prospective renters and requires them to confirm their understanding in writing, J.A. 18-19, 22, 24, 195-196, and petitioner offers

---

* See, *e.g.*, Alamo, *Online Check-In Terms and Conditions* (2017), https://www.alamo.com/en_US/car-rental/checkin/terms-and-conditions.html; Avis Preferred, *Rental Terms and Conditions: United States and Canada*, https://www.avis.com/car-rental/html/global/en/terms/AV_Preferred_Rental_Terms_R1_4.20.16.pdf (last updated Apr. 20, 2016); Budget, *Fastbreak: Terms and Conditions: United States & Canada*, https://www.budget.com/budgetWeb/html/en/terms/BudgetFastbreaktnc.pdf (last updated Apr. 28, 2017); Dollar, *General Policies* (rev. Aug. 25, 2015), https://m.dollar.com/GeneralPolicies_Dollar.aspx; Hertz Corp., *Rental Terms: Rental Qualifications and Requirements* (2014), https://www.hertz.com/rentacar/reservation/reviewmodifycancel/templates/rentalTerms.jsp?KEYWORD=OPERATORS&EOAG=LAX; Maven, *Maven Membership Agreement* (2017), https://www.maven.com/us/membership-agreement.html; National Emerald Club, *Emerald Club Program*, https://www.nationalcar.com/content/dam/National/Emerald%20Club%20agreement%20December%202014.pdf (last visited Dec. 12, 2017); Thrifty, *General Policies and Fee Information* (rev. Nov. 7, 2017), https://www.thrifty.com/AboutUs/content/GeneralPolicies.aspx; Zipcar, *Allowed Drivers*, https://support.zipcar.com/hc/en-us/articles/220676487-Allowed-Drivers (last visited Dec. 12, 2017).

no reason to believe that Avis's practice in that regard is atypical.

A non-renter like petitioner is a stranger to the rental agreement who cannot reasonably expect the same privacy protections as someone who is covered by it. Even where a defendant has transacted face-to-face with someone authorized to grant a property right, this Court has viewed a limited "connection" between the parties as a factor that cuts against a reasonable expectation of privacy in the use of that property. *Carter*, 525 U.S. at 91; see *ibid.* (no reasonable expectation of privacy in one-time short-term use of stranger's apartment); *Rawlings*, 448 U.S. at 105 (no reasonable expectation of privacy in recent acquaintance's purse). Here, no connection of any kind existed between petitioner and Avis, the only entity that could authorize him to drive the car. To the extent that the rental agreement contemplated him at all, it was solely to exclude him as a driver. Petitioner's only connection was to Reed, a person who had no authority to let him take Avis's car.

No societal interest countenances petitioner's acceptance of a car offered in direct violation of the rightful owner's instructions. An *authorized* driver's expectation of privacy would, of course, generally be reasonable. See, *e.g.*, *United States* v. *Miller*, 821 F.2d 546, 548-549 (11th Cir. 1987). And it might well remain so even in the absence of specific property rights—say, in the case of a good-faith renter who is slightly late in returning a car and has thus allowed the rental agreement to expire for a brief period of time. But whatever leeway society might give to an authorized driver who exceeds the terms of his authorization, it would not extend to someone like petitioner, whose actions were never legitimate. See *Kennedy*, 638 F.3d at 167 ("[W]e believe

that society views authorized drivers who return rental cars a few hours late quite differently from unauthorized drivers who borrow rental cars without the rental company's knowledge or permission."); *United States* v. *Cooper*, 133 F.3d 1394, 1400 (11th Cir. 1998) (explaining that the driver of an overdue rental car has an "expectation of privacy" in the car that is "materially different" from that of an unauthorized driver).

c. The unauthorized driving of rental cars also frustrates enforcement of the criminal laws. A criminal like a drug trafficker may well prefer to use a rental car, rather than his own car, to avoid the risk of forfeiture if his illicit actions are discovered. See, *e.g.*, 21 U.S.C. 881(a)(4) (authorizing the forfeiture of vehicles used to transport controlled substances); *United States* v. *Finke*, 85 F.3d 1275, 1277 (7th Cir. 1996) (citing law-enforcement agent's testimony that "drug couriers often use[] rental cars to avoid asset forfeiture laws"). And driving a car rented by someone else, thereby obfuscating the identity of the driver, is a common way to provide further protection to a criminal enterprise. See, *e.g.*, *United States* v. *Allen*, 619 F.3d 518, 523 (6th Cir.) (citing law-enforcement agent's testimony that "drug traffickers often use rental cars to prevent detection"), cert. denied, 562 U.S. 1110 (2010); *United States* v. *Thomas*, 447 F.3d 1191, 1194-1195 (9th Cir. 2006) (drug conspirators rented cars, often in names of others, to transport drugs); *United States* v. *Best*, 135 F.3d 1223, 1225 (8th Cir. 1998) (drug transporter had asked friend to rent vehicle "for him"); *United States* v. *Boruff*, 909 F.2d 111, 113-114 (5th Cir. 1990) (drug dealer had girlfriend rent car for him in his drug smuggling operation), cert. denied, 499 U.S. 975 (1991); *United States* v. *Obregon*, 748 F.2d 1371, 1374 (10th Cir. 1984) (drug transporter

waited outside airport while a third party rented the car).

Petitioner suggests (Br. 38-40) that denying constitutional protection to his conduct would invite a dragnet sweep of rental cars on the roadways. But "the reality hardly suggests abuse," *United States* v. *Knotts*, 460 U.S. 276, 283 (1983) (citation and internal quotation marks omitted). Petitioner points to no actual evidence of the practices he fears in the jurisdictions where it has been the law for decades that an unauthorized driver lacks a legitimate expectation of privacy in a rental car. See, *e.g.*, *United States* v. *Wellons*, 32 F.3d 117, 119 (4th Cir. 1994), cert. denied, 513 U.S. 1157 (1995); *Boruff*, 909 F.2d at 117; *Obregon*, 748 F.2d at 1374-1375. That is presumably because powerful legal and practical obstacles discourage such a practice. Cf. *Utah* v. *Strieff*, 136 S. Ct. 2056, 2064 (2016) (dismissing similar concerns that "police will engage in dragnet searches if the exclusionary rule is not applied").

First, the police cannot stop a car simply because it is a rental; they must have "reasonable suspicion to believe that criminal activity may be afoot." *United States* v. *Arvizu*, 534 U.S. 266, 273 (2002) (citations and internal quotation marks omitted). Anyone in the car—including a passenger or unauthorized driver—may (as petitioner did below) challenge a stop as a seizure of his or her person for which such suspicion was lacking, regardless of whether he or she has rights with respect to a subsequent search of the car. See *Brendlin* v. *California*, 551 U.S. 249, 253, 255-257 (2007). Second, an unauthorized driver like petitioner could also potentially challenge the search directly, to the extent that it infringed on a reasonable expectation of privacy with respect to particular effects within the car. See *Rakas*,

439 U.S. at 148 (observing that the defendants had not "asserted * * * an interest in the property seized"); cf. *Wyoming* v. *Houghton*, 526 U.S. 295, 297-307 (1999) (considering, but rejecting, car passenger's challenge to search of purse). Third, petitioner's proposal would be an ineffective law-enforcement tactic. Because not every breach of the rental agreement is equivalent to relinquishing the car to an unpermitted driver, see p. 19, *supra*, a search would go unchallenged only if the car's occupant turns out to be an unauthorized driver like petitioner. But officers are unlikely to know before stopping the car whether a particular driver is authorized.

C. Petitioner's "Possession And Control" Test Is Unsound

Petitioner contends (Br. 20) that his Fourth Amendment rights in Avis's car should depend not on whether he was an authorized driver under the rental agreement, but instead on whether he had "possession of and control over a closed space." See, *e.g.*, Pet. Br. 21 ("Possession and control over a closed space establishes a reasonable expectation of privacy."). The approach is unsupported by precedent and inherently flawed.

1. Nothing in this Court's precedents supports petitioner's proposed "possession and control" test. His assertion that "[a]ll that mattered" in *Jones* "was that the visitor had some measure of 'dominion and control,'" Br. 22 (quoting *Rakas*, 439 U.S. at 149), disregards that the visitor also "had permission to use the apartment," *Rakas*, 439 U.S. at 149, from someone with actual (or at least unquestioned) authority to grant it. The same was true of the overnight guest whose Fourth Amendment rights were recognized in *Minnesota* v. *Olson*, *supra*. See 495 U.S. at 99 ("The houseguest is there with the permission of his host, who is willing to share his house and his privacy with his guest."). And it was also true

of the defendants in the other cases on which petitioner's proposal relies. See *Mancusi* v. *DeForte*, 392 U.S. 364, 365 (1968) (defendant legitimately present in his office); *Rios* v. *United States*, 364 U.S. 253, 256 (1960) (defendant legitimately present in a taxicab); see also *Rakas*, 439 U.S. at 149 n.16 (observing that the "right to contest the search was not presented * * * or addressed" in *Rios* and limiting *Rios* to its facts).

2. Even petitioner recognizes that the Fourth Amendment rights of a rental-car driver cannot turn on "possession and control" alone. He acknowledges (Br. 21 n.7), for example, that under this Court's decision in *Rakas*, a person who has "stolen" a rental car cannot object to its search, notwithstanding that he both possesses and controls it. See 439 U.S. at 141 n.9. He also appears to acknowledge (Br. 24) that a person who has possession and control of a rental car would nevertheless lack a reasonable expectation of privacy in the car if the person lacked "the renter's permission to drive" it. See, *e.g.*, Pet. Br. 26 (asserting that petitioner's "possession and control of the car *with the renter's permission* is sufficient to establish his reasonable expectation of privacy in the car") (emphasis added).

Petitioner does not attempt to articulate any principle underlying those apparent exceptions to his proposed rule. But by accepting them, petitioner implicitly acknowledges that the possession and control must be "legitimate." *Rakas*, 439 U.S. at 143. This Court explained in *Rakas*, for example, that "one who owns or *lawfully* possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of th[e] right to exclude." *Id.* at 144 n.12 (emphasis added). And *Rakas* viewed the absence of a "possessory interest in the automobile" *id.* at 148—*i.e.*, the absence

of a "*right* to control" and "exclude others," *Black's Law Dictionary* 1353 (10th ed. 2014) (emphasis added)—as significant. Petitioner's position thus rests not on whether he had "possession and control" of Avis's car, but on whether his assumption of possession and control—in contravention of the express terms of the rental agreement—was an act that "the law recognizes as 'legitimate.'" *Rakas*, 439 U.S. at 144 n.12. For the reasons explained above, it was not.

3. Petitioner's position that Reed's unauthorized say-so was sufficient to give him a legitimate interest in Avis's car has no logical stopping point and would produce anomalous results. First, his view implies that someone who received the car from *him* would also have a legitimate expectation of privacy while driving it. Although petitioner undoubtedly lacks authority to transfer the car to someone else, that does not distinguish him from Reed, whose own transfer was likewise unauthorized. Petitioner would presumably acknowledge that a legitimate expectation of privacy ceases to exist at some point in a chain of unauthorized automobile transfers. The only sensible point is the initial impermissible handover—in this case, Reed's.

Second, petitioner's view suggests no temporal restrictions. One would think that after some number of days and weeks beyond the term of Reed's rental, the rental car would be considered "stolen," Pet. Br. 21 n.7, if it had still not been returned. But given that petitioner does not believe that the conditions of Reed's rental have any bearing on his Fourth Amendment rights, petitioner has no basis for identifying when that temporal endpoint would be.

Third, petitioner's approach would have reasonable expectations of privacy blink in and out of existence,

moment by moment, in insupportable ways. Petitioner suggests (Br. 34-35) that sole occupancy of a vehicle in itself is constitutionally significant, asserting that a passenger acquires a Fourth Amendment interest in a car if the driver leaves him in it while visiting a store. But the understanding that the trunk, glove compartment, and other areas of the car do not belong to the passenger, see *Rakas*, 439 U.S. at 148-149, does not change simply because the driver ducks out to buy a soda, even if the driver trusts the passenger with the keys for purposes of "listening to the radio" (Pet. Br. 34) during the driver's brief absence. On petitioner's rationale, the Court's holding in *Minnesota* v. *Carter*, *supra*—that the defendants could not "claim the protection of the Fourth Amendment in the home of another" based on a short-term commercial venture there, 525 U.S. at 91—would have come out the other way had the police happened to arrive while the defendants were inside, but the leaseholder was out running a brief errand.

4. To the extent that petitioner suggests (Br. 26-28) that a "close familial connection to the renter" entitles him to special Fourth Amendment rights that others in his circumstances would not have, that argument is neither properly presented nor doctrinally sound.

Petitioner's briefs in the court of appeals did not press the point he now raises, and the court did not address it. Petitioner's opening brief referred to Reed as his "girlfriend" (not his fiancée). Pet. C.A. Br. 4. It noted that they had children together, *ibid.*, but it did not otherwise discuss the nature of their relationship or urge it as a separate ground for finding that he had Fourth Amendment rights in the car she had rented, see *id.* at 23-25. He did not, for example, suggest that the relationship fit within the "extraordinary circumstances"

exception, *Kennedy*, 638 F.3d at 168, that the court below had recognized to the general rule precluding Fourth Amendment claims by unauthorized rental-car drivers. See *ibid.* (citing *United States* v. *Smith*, 263 F.3d 571 (6th Cir. 2001)); Pet. Br. 27-28 (noting that marriage was a factor in *Smith*).

It is well-established that "[w]here issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them." *Zobrest* v. *Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993) (quoting *Adickes* v. *S. H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970)). Consideration of petitioner's new argument would be particularly unwarranted here, where the petition for a writ of certiorari likewise referred to Reed as petitioner's "girlfriend," Pet. 2, 5; see Pet. 15, and did not identify the quasi-marriage relationship he now asserts as a point of distinction from decisions he alleged to conflict with the decision below.

The factual dispute is particularly pertinent because the record does not clearly support the proposition that petitioner, "by his conduct, has exhibited an actual (subjective) expectation of privacy," *Knotts*, 460 U.S. at 281 (citation and internal quotation marks omitted), based on his relationship with Reed. He told the officers during the stop that the car had been rented by a "friend." J.A. 69, 146, 155, 171, 177. Although he testified at the suppression hearing that he and Reed had been engaged when she rented the car, J.A. 180, he later told the Probation Office that he had been "romantically involved" with another woman, in another State, "intermittently for five years," PSR ¶ 79. The Probation Office report described Reed as petitioner's "former girlfriend" and did not view her as "an appropriate verification source" for "his personal history information."

PSR ¶ 80. And petitioner did not testify that he believed he was (or claim that he actually was) authorized to drive Avis's car on the ground that he was Reed's "spouse." J.A. 19, 24; see J.A. 179-188.

In any event, petitioner's asserted close relationship with Reed provides no basis for extending Fourth Amendment rights to encompass his claim in the car she rented. To the extent that society expects families to share rental cars, Pet. Br. 26-28, that expectation is reflected in rental agreements' express exemption of spouses from the general prohibition on unauthorized drivers, *e.g.*, J.A. 19, 24, and by state laws that deem spouses to be authorized drivers for at least certain purposes, see, *e.g.*, Cal. Civ. Code § 1939.01(e)(2) (West Supp. 2017); Mo. Ann. Stat. § 407.730(2)(b) (West 2011); Nev. Rev. Stat. Ann. § 482.31515(2) (LexisNexis 2010); Or. Rev. Stat. § 646A.140(1)(b) (2015). Here, petitioner has made no showing of any special relationship or exceptional circumstances that should allow him to clothe himself in whatever rights Reed acquired as a renter. His assertion of her rights in this circumstance is thus akin to the sort of "vicarious Fourth Amendment claims" that this Court has long rejected, partly in recognition that they "exact[] a substantial social cost" because "[r]elevant and reliable evidence is kept from the trier of fact and the search for truth at trial is deflected." *Rakas*, 439 U.S. at 137.

Petitioner, on this record, gives all appearances of having used Reed as a straw renter to allow him to take sole control of a rental car that he would not have been able to rent himself. He did so either knowingly or in unreasonable unawareness of his lack of legitimate rights in the car. Petitioner retained reasonable expectations of privacy and security in his "person[]," but he

had no reasonable expectation of privacy or security in the trunk of the rental car—an "effect[]" he had no legitimate authority to possess or control.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
JOHN P. CRONAN
Acting Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
ERIC J. FEIGIN
FREDERICK LIU
Assistants to the Solicitor General
THOMAS E. BOOTH
Attorney

DECEMBER 2017